

Robert E. Sabido, OSB No. 96416
rsabido@cvk-law.com
COSGRAVE VERGEER KESTER LLP
805 SW Broadway, 8th Floor
Portland, Oregon 97205
Telephone: (503) 323-9000
Facsimile: (503) 323-9019

Attorney for Defendant First National Bank of Omaha

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

LAWRENCE JAMES SACCATO,

Plaintiff,

v.

DAVIS LAW FIRM; DKC INVESTMENTS
LLC a/s/o; FIRST NATIONAL BANK OF
OMAHA,

Defendants.

Case No. CV-10-6192 TC

**MEMORANDUM SUPPORTING
DEFENDANT FIRST NATIONAL BANK
OF OMAHA'S MOTION TO DISMISS**

RELEVANT LAW

A. Pleading Standards

To survive a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, __ U.S. __, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007); internal quotations omitted).

///

A complaint that merely states “labels and conclusions” or “a formulaic recitation of the elements of a cause of action” is insufficient. *Iqbal*, 129 S. Ct. at 1949. And so is a claim that merely tenders “naked assertions devoid of further factual enhancement.” *Id.* (internal quotations omitted). Additionally, a complaint that pleads facts merely consistent with a defendant’s liability “stops short of the line between possibility and [the requisite] plausibility of entitlement to relief” to survive a motion to dismiss. *Id.* (internal quotations omitted).

B. Fair Credit Reporting Act

Section 1681s-2(a) of the Fair Credit Reporting Act (“FCRA”) imposes certain duties on furnishers of information to provide accurate information to credit reporting agencies. See 15 U.S.C. §1681-2(a). A violation of section 1681s-2(a), however, does not give rise to a private cause of action. See 15 U.S.C. §1681s-2(c); *McNall v. Credit Bureau of Josephine County*, 689 F. Supp. 2d 1265, 1272 (D. Or. 2010).

DISCUSSION

Plaintiff alleges that defendant First National Bank of Omaha (“FNBO”) violated the FCRA by:

- “[R]eport[ing] this account to all three [credit] bureaus * * * with erroneous and inaccurate information * * *”,
- Not reporting the account to the credit bureaus as disputed; and
- “[U]pdating * * * [p]laintiff[']s credit reports with inaccurate and erroneous information.”

(Third Amended Complaint, ¶¶ 20, 21, 25). Those alleged violations implicate the duties of furnishers of information, under section 1681s-2(a) of the FCRA, to provide accurate information to the credit reporting agencies. Any violation of those duties, however, does not give rise to a private cause of action. See 15 U.S.C. §1681s-2(c);

McNall, 689 F. Supp. 2d at 1272. Accordingly, plaintiff fails to plead any facts showing the plausibility of entitlement to relief against FNBO. The court, therefore, should dismiss plaintiff's claims against FNBO. See *Iqbal*, 129 S. Ct. at 1949.

CONCLUSION

The court should grant FNBO's motion to dismiss.

DATED: October 4, 2010

COSGRAVE VERGEER KESTER LLP

/s/ Robert E. Sabido

Robert E. Sabido, OSB No. 96416

rsabido@cvk-law.com

Telephone: (503) 323-9000

Fax: (503) 323-9019

Attorney for Defendant First National
Bank of Omaha

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing

MEMORANDUM SUPPORTING DEFENDANT FIRST NATIONAL BANK OF

OMAHA'S MOTION TO DISMISS on the date indicated below by:

- ☒ mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- ☐ hand delivery,
- ☐ facsimile transmission,
- ☐ overnight delivery,
- ☒ electronic filing notification;

I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorney(s) at the address(es) listed below:

Lawrence James Saccato
c/o 6387 Old 99 S.
Roseburg, OR 97471
Plaintiff *pro se*

Jeffrey Hasson
Davenport & Hasson, LLP
12707 NE Halsey Street
Portland, OR 97230
Attorney for Defendant DKC Investments LLC

DATED: October 4, 2010

/s/ Robert E. Sabido
Robert E. Sabido